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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 170828816-8999-02]

RIN 0648-BH16

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish; Amendment 20

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements through regulations measures included in Amendment 20 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, as adopted by the Mid-Atlantic Fishery Management Council. This action is necessary to prevent the reactivation of latent effort in the longfin squid fishery, preserve economic opportunities for more recently active participants in the longfin squid fishery, avoid overharvest during Trimester II (May – August) of the longfin squid fishery, and reduce potential negative impacts on inshore spawning longfin squid aggregations and squid egg masses. This action is intended to promote the sustainable utilization and conservation of the squid and butterfish resources, while promoting the sustained participation of fishing communities and minimizing adverse economic impacts on such

communities.

DATES: This final rule is effective March 1, 2019.

ADDRESSES: The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for this action that describes the Council's preferred measures and other considered alternatives and the potential impacts of such alternatives. Copies of the Amendment 20 document, including the EA, the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The EA/RIR/RFA analysis is also accessible via the Internet at <http://www.mafmc.org/s/Squid-Amendment-EA.pdf> and www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2017-0110. Copies of the small entity compliance guides prepared for this action are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at: <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, douglas.christel@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The purpose of Amendment 20 is to reduce latent (unused) effort in the longfin squid fishery and adjust the management of the fishery during Trimester II to avoid overharvesting the longfin squid resource and harming squid egg masses. The Mid-Atlantic Fishery Management Council is concerned that unused longfin squid/butterfish moratorium permits could be activated. This could lead to excessive fishing effort, which could lead to premature fishery closures and reduced access to available longfin squid quota by vessels with a history of higher landings in recent years. Excessive effort may also increase the bycatch and discards of both longfin squid and non-target species. The measures adopted by the Council are intended to help prevent excessive catch during Trimester II, a race to fish, frequent and disruptive fishery closures, and reduced fishing opportunities for vessels that are more recently dependent upon longfin squid. Additional information on the mackerel, squid, and butterfish fisheries can be found online at <http://www.mafmc.org/msb/> and <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html>.

On June 7, 2017, the Council adopted final measures for Amendment 20, submitting the draft amendment and EA to NMFS for preliminary review on June 6, 2018. NMFS published a Notice of Availability (NOA) in the **Federal Register** on July 27, 2018 (83 FR 35602), informing the public that the Council had submitted this amendment to the Secretary of Commerce for review and approval. NMFS published a proposed rule that included implementing regulations and corrections to existing

regulations on August 31, 2018 (83 FR 44548). The public comment period for the NOA ended on September 25, 2018, while proposed rule comments were accepted through October 1, 2018. After considering public comment on both the NOA and proposed rule, NMFS approved Amendment 20 and the associated measures outlined in the proposed rule on October 22, 2018.

Approved Measures

NMFS approved all measures proposed in Amendment 20, as described below.

1. Separate Butterfish Moratorium Permit

This action separates the current longfin squid/butterfish moratorium permit into a new butterfish moratorium permit and a separate, revised longfin squid moratorium permit, as described further below. The Regional Administrator will automatically issue a new butterfish moratorium permit to all entities currently issued a 2018 longfin squid/butterfish moratorium permit, including those held in confirmation of permit history (CPH) in February 2019, as part of the annual permit renewal process. The new butterfish moratorium permit will become effective on March 1, 2019.

The existing permit restrictions and vessel trip report (VTR), observer, slippage, and transfers-at-sea requirements applicable to longfin squid/butterfish moratorium permits also apply to the new butterfish moratorium permit, as listed below. Butterfish moratorium permits will maintain existing vessel permit baseline characteristics, vessel replacement and upgrade provisions, and the restriction on permit splitting associated with the previous longfin squid/butterfish moratorium permit. The new butterfish moratorium permit must maintain an operational vessel monitoring system (VMS) unit to

provide NMFS with automatic position reports, but is not required to submit a specific butterfish trip declaration using the VMS or submit daily VMS catch reports of butterfish. For example, a vessel operator targeting butterfish can continue to declare a longfin squid trip via VMS if the operator anticipates catching more than an incidental amount of longfin squid on that trip. Finally, the existing butterfish possession limits specified at 50 CFR 648.26(d)(1) and (2) (unlimited when fishing with a mesh size of 3 inches (76 mm) or greater, and 5,000 lb (2,268 kg) per trip when fishing with less than 3-inch (76-mm) mesh) remain the same for this new permit.

2. Tier 1 Longfin Squid Moratorium Permit

In February 2019, the Regional Administrator will automatically issue a new Tier 1 longfin squid moratorium permit to any vessel currently issued a 2018 longfin squid/butterfish moratorium permit, including those currently held in CPH, that landed at least 10,000 lb (4,536 kg) of longfin squid in any year from 1997-2013. Eligibility will be based on fishing history documented through dealer reports. The new Tier 1 longfin squid moratorium permit will become effective March 1, 2019.

Any vessel owner, including those automatically issued a Tier 2 permit described below, may apply for a Tier 1 longfin squid permit through February 29, 2020. The Regional Administrator will notify any vessel owner that does not qualify to be issued a new Tier 1 longfin squid moratorium permit based on the criteria described above. An owner could appeal that decision within 30 days of the denial notice by submitting a written request to the Regional Administrator. Appeals could be based upon evidence that the information used in the original denial was incorrect. During an appeal, a vessel

owner could request the Regional Administrator authorize his/her vessel to continue fishing for longfin squid under the measures for a Tier 1 permit until that appeal is completed. The NOAA Fisheries National Appeals Office will review all appeals submitted to the Regional Administrator.

Tier 1 longfin squid moratorium permits are subject to all measures applicable to the existing longfin squid/butterfish moratorium permit, including, but not limited to, the vessel baseline and upgrade, VTR and VMS reporting, observer, slippage, and transfers at sea requirements. A Tier 1 longfin squid moratorium permit may land an unlimited amount of longfin squid per trip, unless the directed longfin squid fishery is closed and incidental limits are implemented, as described further below. Tier 1 permits may possess up to 15,000 lb (6,804 kg) of longfin squid per trip after the longfin squid fishery is closed in Trimester II, provided the vessel is declared into the *Illex* squid fishery, possesses at least 10,000 lb (4,536 kg) of *Illex* squid, and is fishing offshore in the area defined in the current regulations at § 648.23(a)(5).

3. Tier 2 Longfin Squid Moratorium Permit

In February 2019, the Regional Administrator will automatically issue a Tier 2 longfin squid moratorium permit to any vessel currently issued a 2018 longfin squid/butterfish moratorium permit, including those held in CPH, that does not qualify for a Tier 1 longfin squid moratorium permit based on the criteria described above. The Tier 2 permit will become effective March 1, 2019.

A Tier 2 permit is subject to all measures applicable to the existing longfin squid/butterfish moratorium permit, including, but not limited to, the permit, VTR and

VMS reporting, observer, slippage, and transfers at sea requirements. However, a Tier 2 permit is only allowed to land up to 5,000 lb (2,268 kg) of longfin squid per trip, unless the directed longfin squid fishery is closed and incidental limits are implemented, as described further below. A Tier 2 moratorium permit may continue to possess up to 5,000 lb (6,804 kg) of longfin squid per trip after the longfin squid fishery is closed in Trimester II if the vessel is declared into the *Illex* squid fishery, possesses at least 10,000 lb (4,536 kg) of *Illex* squid, and is fishing offshore in the area specified at § 648.23(a)(5).

4. Tier 3 Longfin Squid Incidental Permit

Amendment 20 creates a new Tier 3 longfin squid moratorium permit for vessels previously issued an open access squid/butterfish incidental catch permit that landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year from 1997-2013. A vessel owner must apply for a Tier 3 longfin squid moratorium permit by submitting an application to the Regional Administrator by February 29, 2020.

The Regional Administrator will notify the owner of a vessel permit that does not qualify for a new Tier 3 longfin squid moratorium permit. An owner can appeal that decision within 30 days of the denial notice by submitting a written request to the Regional Administrator. The NOAA Fisheries National Appeals Office will review all appeals submitted to the Regional Administrator. Appeals can be based upon evidence that the information used in the original denial was incorrect. During an appeal, a vessel owner can request the Regional Administrator to authorize its vessel to continue fishing for longfin squid under the measures for a Tier 3 longfin squid permit until that appeal is completed.

A vessel issued a Tier 3 longfin squid permit is subject to all measures applicable to the existing squid/butterfish incidental catch permit. Unlike Tier 1 or 2 longfin squid moratorium permits, Tier 3 permits are not issued a vessel baseline and are not subject to the vessel upgrade provisions. A Tier 3 longfin squid moratorium permit may land up to 2,500 lb (1,134 kg) of longfin squid per trip, unless the directed longfin squid fishery is closed during Trimester II and incidental limits are implemented, as described further below.

5. Longfin Squid Moratorium Permit Swap

Amendment 20 allows an owner of more than one longfin squid/butterfish moratorium permit as of May 26, 2017, a one-time opportunity to move longfin squid moratorium permits onto a different vessel that they own to optimize their fishing operations. A vessel owner may move a qualified Tier 1 longfin squid moratorium permit from one of his/her vessels and place it on another vessel issued a Tier 2 longfin squid moratorium permit that is owned by that same entity. In this exchange, the Tier 2 longfin squid moratorium permit would be moved onto the vessel originally issued the Tier 1 longfin squid moratorium permit to complete the “swap” of permits.

Only permits issued to vessels owned by the same business entity as of May 26, 2017, are able to participate in the permit swap; a permit held in CPH as of May 26, 2017, is not eligible to participate in this transaction. Vessels involved in the swap must be within 10 percent of the baseline length overall and 20 percent of the baseline horsepower of the permit to be placed on each vessel. Only Tier 1 and Tier 2 longfin squid moratorium permits may be transferred as part of this permit swap; no other fishery

permits can be swapped as part of this transaction. An owner must apply for the permit swap within one year of the issuance of the Tier 1 or Tier 2 longfin squid moratorium permits. A longfin squid moratorium permit swap application form is available upon request from the Regional Administrator (see **ADDRESSES**).

6. Incidental Longfin Squid Possession Limit

Amendment 20 reduces the longfin squid possession limit from 2,500 lb (1,134 kg) per trip to 250 lb (113 kg) per trip for vessels issued an open access squid/butterfish incidental permit, and for all longfin squid permits once the Trimester II quota has been landed. The longfin squid incidental limit applicable to all longfin squid moratorium permits remains 2,500 lb (1,134 kg) per trip for any longfin squid fishery closure implemented during Trimesters I or III.

7. Corrections and Clarifications to Existing Regulations

In § 648.2, the term “Northeast Regional Office” in the definition of “Atlantic Mackerel, Squid, and Butterfish Monitoring Committee” is replaced by “Greater Atlantic Regional Fisheries Office.” This rule also adds definitions for “Calendar day,” “Directed fishery,” and “Incidental catch.”

In § 648.4(a)(5)(iii), paragraphs (C), (D), (E), (H) are revised and paragraph (M) is deleted to eliminate outdated and unnecessary regulations regarding Atlantic mackerel moratorium permit qualifications.

In § 648.7, text at (a)(1)(i) and (ii) that was inadvertently deleted in the final rule implementing the Mid-Atlantic Unmanaged Forage Omnibus Amendment (August 28, 2017; 82 FR 40721) is reinserted.

In § 648.10(e)(5)(i), the phrase “...or monkfish fishery” is replaced with “monkfish, or any other fishery” to maintain consistency with other language in this paragraph and related text in paragraph (e)(5)(ii).

In § 648.13, paragraph (a) is revised to clarify that longfin squid, *Illex* squid, and butterfish moratorium permits and squid/butterfish incidental catch permits must be issued a letter of authorization by the Regional Administrator to transfer longfin squid, butterfish, or *Illex* squid at sea.

In § 648.14, the following corrections are made:

1. The introductory text to paragraph (g)(1)(i) is revised to insert reference to the fishery closure and accountability measure regulations at § 648.24(d) and to replace “Take, retain...” with “Take and retain...”
2. Paragraph (g)(1)(ii)(B) is revised to use the term “*Illex* squid.”
3. Paragraph (g)(2)(i) is revised to reference Subpart B instead of § 648.22.
4. Paragraph (g)(2)(ii)(D) and (F) are revised to read that it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit to “Take and retain, possess, or land” these species instead of “Take, retain, possess, or land” these species.
5. Paragraph (g)(2)(v) is revised to replace “limited access” with “directed” to reference the Atlantic mackerel, longfin squid, and *Illex* squid fisheries.

In § 648.22, the following corrections are made:

1. In paragraph (a), species headings are added to clarify which elements are to be identified for each species during the specifications process and to spell out terms

used for the first time in the regulations.

2. The term “*Illex* squid” replaces the term “*Illex*” for clarity in several paragraphs.
3. In paragraph (c)(3), the reference to § 648.4(1)(5)(ii) is replaced with reference to § 648.4(a)(5)(vi).

In § 648.25(a)(4)(i), the reference to paragraph (a)(2) would be replaced with the accurate reference to paragraph (a)(3) of that section.

Comments and Responses

During the public comment periods for the NOA and the proposed rule for this amendment, we received six comments from six individuals, two of which were not responsive to the action. One individual expressed general opposition to the rule, Lund’s Fisheries supported all proposed measures, and Pew Charitable Trusts along with one individual supported some, but not all of the proposed measures. The following discussion summarizes the issues raised in the comments that were relevant to this action and associated NMFS’s responses. Please note that, pursuant to section 304(a)(3) of the Magnuson-Stevens Act, when NMFS considers the responses to comments, NMFS may only approve or disapprove measures proposed in a particular fishery management plan, amendment, or framework adjustment, and may not change or substitute any measure in a substantive way.

General Comments

Comment 1: Pew Charitable Trusts recommended that NMFS disapprove the Council’s decision to not implement a spawning closure under Amendment 20. Pew suggested NMFS implement a 12-mile spawning closure for bottom trawl vessels south

of Marthas Vineyard and Nantucket to limit the catch of pre-spawned squid, bycatch of squid egg mops and predator species, and negative impacts to squid egg mops and the greater ecosystem. Pew asserts that the Council's decision to not implement a spawning closure is inconsistent with analysis in the Amendment 20 EA, stating that spawning closure options were analyzed in full during the amendment process and are supported by the best available science.

Response: As noted above, NMFS may only approve or disapprove measures proposed in a particular amendment. Because the Council did not adopt a spawning closure area in this action, there is nothing for us to disapprove in Amendment 20 and we cannot unilaterally implement such a closure through this action.

The Amendment 20 EA includes some analysis of the impacts of squid fishing on squid egg mops and future recruitment and fishery catch, but does not include any analysis of specific closure areas considered early in the development of this action. The Council decided to remove such areas from further consideration at its December 2016 meeting for possible development in a future action. The Council understood the interest in such areas to be more related to user conflicts than squid productivity, as closure areas would likely shift effort from one small area into other areas during Trimester II without reducing overall catch. At its December 2017 meeting, the Council deferred further development of spawning closures until it could evaluate the effects of measures included in Amendment 20, suggesting that the Amendment 20 measures may be sufficient to address some of the concerns regarding excessive fishing effort south of Martha's Vineyard and Nantucket.

Longfin Squid and Butterfish Moratorium Permits

Comment 2: One individual suggested that there should be zero moratorium permits, indicating that fish species are being overfished and going extinct due to insufficient enforcement of vessel catch. Lund's Fisheries supported the creation of the longfin squid tiered permitting system, stating that it better controls longfin squid landings, avoids excessive catch following the closure of the Trimester II fishery, minimizes discards of other species, prevents the reactivation of latent effort, and maximizes economic opportunities for active participants. Lund's Fisheries also noted that the Tier 2 permit preserves more recent fishing patterns and minimizes squid discards when targeting other species, while the Tier 3 permit eliminates a loophole that previously allowed owners to cancel their federal longfin squid permits to take advantage of higher landing allowances in state waters. Finally, Lund's Fisheries supported creating a separate butterfish moratorium permit, stating that it avoids unintentionally reducing domestic fishing capacity for butterfish.

Response: We disagree that there should be zero moratorium permits. As noted by Lund's Fisheries, limiting access to a fishery through moratorium permits provides many benefits to the fishery and the resource, including greater control of fishery landings by limiting the number of vessels that may participate in the fishery and how much each vessel may catch. The Tier 3 permit covers past incidental catch of longfin squid, particularly by vessels targeting other species such as whiting. This should help reduce the potential for excessive fishing effort, better control longfin squid catch, and avoid discards that may have otherwise occurred under the reduced longfin squid

possession limit for open access squid/butterfish incidental permits implemented by this action. A separate butterfish permit preserves fishing opportunities for that species and could help maintain or even expand a domestic fishery consistent with the objectives of the FMP. Therefore, we approved the Amendment 20 changes to longfin squid and butterfish moratorium permits, and we are implementing the proposed regulations through this final rule.

Comment 3: One individual supported a tiered longfin squid permit system, but indicated the proposed landings qualification criteria (less than 30 lb (14 kg) per day) is too low, does not represent even part-time fishing for longfin squid, and is not fair to full-time squid vessels that originally developed this fishery.

Response: The Council recognized that the preferred landings qualification criteria represents just four trips under the current incidental trip limit to enable more vessels to re-qualify, noting that only the least active vessels would be impacted by this action. By only considering landings through 2013 (the control date established for the fishery), the qualification criteria exclude vessels that had been inactive until recently, including those that re-entered the fishery in 2016 when participation increased substantially due to higher than average catch rates that season. This addresses the main concern raised during scoping hearings and preserves the greatest access to those most active in the fishery. The creation of a Tier 2 permit recognizes historic participation in the fishery, and provides such vessels with a higher level of access to the fishery than an incidental permit. The Council concluded that the criteria selected represented the best balance between avoiding a race to fish and ensuring that the fishery can still achieve

optimum yield.

Longfin Squid Moratorium Permit Swap

Comment 4: Lund’s Fisheries supported the measure allowing vessel owners a one-time opportunity to “swap” longfin squid moratorium permits among vessels owned by the same entity. They stated that this would help optimize fishing operations.

Response: We agree, and implement that measure through this final rule.

Incidental Longfin Squid Possession Limit

Comment 5: Both Pew Charitable Trusts and Lund’s Fisheries supported reducing the longfin squid possession limit from 2,500 lb (1,134 kg) to 250 lb (113 kg) for open access longfin squid permits and for all longfin squid permits once the Trimester II quota is caught. Pew noted that such a reduction would prevent continued directed fishing once the Trimester II fishery is closed, mitigate the harmful effects of squid fishing during the spawning period, decrease the catch of pre-spawned squid, and limit the destruction of egg mops. Lund’s also notes that it allows more animals to survive the summer fishery to benefit the fall and winter longfin squid fisheries.

Response: We agree, and implement the reduced longfin squid incidental possession limits through this final rule.

Corrections and Clarifications to Existing Regulations

Comment 6: Lund’s Fisheries suggested that we retain reference to the Atlantic mackerel landing limit in metric tons instead of changing it to kilograms in § 648.4(a)(5)(iii)(B), as proposed.

Response: In response to public comment, we have retained reference to Atlantic

mackerel landing limits in metric tons.

Longfin Squid Trimester II Quota Allocation

Comment 7: Pew Charitable Trusts stated that we should disapprove the Council's decision to take no-action on adjustments to the longfin squid Trimester II quota allocation and prohibit the roll-over of unused Trimester I longfin squid quota into Trimester II. Pew is concerned that excessive catch during Trimester II harms spawning squid and egg mops, which negatively impacts future squid recruitment. In conjunction with the reduced longfin squid incidental possession limits and the spawning closure described in Comment 1 above, it suggests that reductions in Trimester II fishing effort will benefit the ecosystem and other species by reducing the catch of longfin squid, which serves as an important forage species, and the bycatch of summer flounder, striped bass, and blueback herring.

Response: NMFS may only approve or disapprove measures proposed in a particular amendment. Because the Council did not adjust the longfin squid Trimester II quota under Amendment 20, there is nothing for us to disapprove in this action. The Council may consider such adjustments in a future action.

As adopted by the Council, Amendment 20 includes several measures that reduce longfin squid fishing effort and better control landings during Trimester II, including revisions to longfin squid permits and adjustments to possession limits for both moratorium and incidental catch permits. The Council recognized that eliminating quota roll-over would additionally limit catch during Trimester II, and that excessive catch during Trimester II could negatively affect the species. However, current estimates of

longfin squid biomass are well above target levels. The Council determined that existing quota allocations were sufficiently precautionary and that measures included in Amendment 20 were adequate to keep catch from exceeding the current Trimester II quota.

Changes from the Proposed Rule

The proposed rule suggested revising § 648.4(a)(5)(iii)(B) to reflect the Atlantic mackerel landing limit in kg instead of mt. Based on public comment, references to the Atlantic mackerel limits will continue to be listed in metric tons and will not be changed to kilograms.

In § 648.4(a)(5)(i)(A) and (B), the proposed rule included a 90-day delay before new longfin squid moratorium permits became effective or a vessel owner could apply for a permit, respectively. At the time, this was considered necessary to prepare to issue permits and process applications. This final rule delays the effective date of the new longfin squid moratorium permits until March 1, 2019, to align the issuance of the new permits with the annual permit renewal process. Therefore, this final rule revises § 648.4(a)(5)(i)(A) and (B) to indicate the Regional Administrator will begin issuing Tier 1 and 2 permits in February 2019 and to allow vessel owners to begin applying for such permits once this action becomes effective.

15 CFR Part 902.1(b) is revised to include reference to the Office of Management and Budget (OMB) control number 0648-0679 for the regulations at 50 CFR 648.4 to reflect the new information collections associated with the longfin squid moratorium permit measures approved under Amendment 20 and implemented in this final rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Amendment 20 is necessary for the conservation and management of the longfin squid and butterfish fisheries managed by the Mid-Atlantic Fishery Management Council and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

This proposed rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

A Final Regulatory Flexibility Act (FRFA) analysis was prepared for this action. The FRFA incorporates the Initial Regulatory Flexibility Act (IRFA) analysis, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Amendment 20 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Amendment 20 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS (see **ADDRESSES**).

Summary of the Significant Issues Raised by Public Comments in Response to the IRFA.

A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any

Changes Made from the Proposed Rule as a Result of Such Comments

The public did not raise any significant issues in response to the IRFA, so no changes were made from the proposed rule.

Description and Estimate of the Number of Small Entities to Which This Final Rule

Would Apply

For the purposes of the RFA analysis, the ownership entities (or firms) are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with Federal longfin squid/butterfish permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For purposes of the RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of \$11 million (NAICS 11411) for all its affiliated operations worldwide. A business primarily engaged in for-hire (charter/party) operations is characterized as annual gross receipts not in excess of \$7.5 million. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available).

This action affects any vessel issued a valid Federal longfin squid/butterfish moratorium permit or an open access squid/butterfish incidental permit. According to the commercial database, 295 separate vessels were issued a longfin squid/butterfish moratorium permit in 2016. These vessels were owned by 222 entities, of which 214 were categorized as small business entities using the definition specified above. In 2016, 1,528 vessels were issued an open access squid/butterfish incidental permit. These vessels were owned by 1,114 entities, of which 1,105 were small business entities. In total, 1,319 small business entities may be affected by this rule out of a potential 1,336 entities (large and small) that may be affected by this action. Therefore, 99 percent of affected entities are categorized as small businesses.

Not all entities affected by this action landed fish for commercial sale in 2016. Nine small business entities issued a longfin squid/butterfish moratorium permit did not have any fishing revenue in 2016, while 274 small business entities issued an open access squid/butterfish incidental catch permit did not have any fishing revenue in 2016. Only 1,036 small business entities had fishing revenue in 2016, representing 79 percent of the small entities affected by this action.

Description of the Projected Reporting, Recordkeeping, and Other Compliance

Requirements of this Final Rule

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0679. Public reporting burden and costs associated with these information collections, including the time for reviewing instructions, searching existing data sources,

gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

1. Application for a longfin squid moratorium permit, OMB# 0648-0679 (60 min/response and an annual cost of \$254.80 for postage);
2. Appeal of the denial of a longfin squid moratorium permit, OMB# 0648-0679 (120 min/response and an annual cost of \$226.87 for postage); and
3. Application for a longfin squid moratorium permit swap, OMB# 0648-0679 (5 min/response and an annual cost of \$1.63 for postage).

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Description of Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

For the longfin squid moratorium permit alternatives, measures implemented by this final rule (Alternative 1C in the EA) more effectively meet the objectives of this action to reduce latent effort in the fishery and avoid overharvest during Trimester II than other alternatives considered. By reducing the number of latent permits and overall fishing capacity consistent with the control date established by the Council, this action will help prevent future races to fish, excess longfin squid catch during Trimester II, and

reduced fishing opportunities for permits that have been more dependent on longfin squid. This could improve economic returns for the most active participants in the fishery. Because this action also implements the Tier 2 permit, vessels that do not qualify for a Tier 1 permit are still able to continue to participate in the fishery, but at a lower level than those with higher landings during the qualification period. In addition, the permit “swap” provision allows an owner of multiple longfin squid moratorium permits to move permits among vessels he/she owns to optimize operations and maximize longfin squid revenue. Together, these measures represent the best balance of avoiding excessive landings and a race to fish by not allowing too many vessels to target longfin squid, while ensuring that enough vessels remain in the fishery to achieve optimum yield and minimizing economic impacts to vessels that do not re-qualify for the Tier 1 permit.

The higher Tier 3 longfin squid moratorium permit landings qualification threshold implemented by this action (Alternative 3C) more effectively meets the objectives of this action than other alternatives considered. Approved measures limit vessels without a history of substantial landings to a smaller possession limit (250 lb or 113 kg per trip) and maintains the existing longfin squid incidental possession limit (2,500 lb or 1,134 kg) to minimize longfin squid discards for permits that had more longfin squid landings in recent years. These measures recognize historic landings, allowing vessels landing incidental amounts of longfin squid when targeting other fisheries to continue to do so, maintaining longfin squid as a source of fishing revenue on those trips. Reducing the number of vessels that can land 2,500 lb (1,134 kg) of longfin squid also reduces overall fishing effort, particularly when longfin squid are nearshore and more available to the fishery during Trimester II. This could prevent overfishing and

preserve more biomass for future seasons, increasing future fishing revenues, particularly during Trimester III and Trimester I of the following year.

Reducing the longfin squid possession limit to 250 (113 kg) per trip once the Trimester II quota is caught will help prevent excessive longfin squid catch and reduce negative impacts to longfin squid and egg mops during the Trimester II spawning season. Unlike the other alternatives, the measures implemented by this action (Alternative 5B) provide additional control over longfin squid catch that will essentially eliminate incentives to target longfin squid once the Trimester II directed fishery is closed. Excessive landings during Trimester II could negatively affect squid productivity and have been shown to reduce longfin squid catch rates in subsequent seasons, which also reduces future fishing revenues. These measures should help reduce fishing effort during the spawning season, which could prolong longfin squid availability into Trimester III and increase future longfin squid productivity. In doing so, this action may produce higher future economic returns than the other alternatives considered.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of the guide (*i.e.*, permit holder letter) will be sent to all entities issued longfin squid and butterfish permits. The guide and this final rule will be available upon

request from the Regional Administrator (see **ADDRESSES**) and online at <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html>.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 10, 2018.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 15 CFR part 902 and 50 CFR part 648 are amended as follows:

Title 15—Commerce and Foreign Trade

PART 902--NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR,” revise the entry for “648.4” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
648.4	-0202, -0212, -0529, and -0679
* * * * *	

* * * * *

Title 50—Wildlife and Fisheries

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.2, revise the definition of “Atlantic Mackerel, Squid, and Butterfish Monitoring Committee” and add definitions for “Calendar day,” “Directed fishery,” and “Incidental catch” in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

* * * * *

Calendar day, with respect to the squid and butterfish fisheries, means the 24-hr period beginning at 0001 hours and ending at 2400 hours,

* * * * *

Directed fishery, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means commercial fishery operations in which more than an incidental catch of each species, as defined in this section, is retained by a vessel.

* * * * *

Incidental catch, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means less than 250 lb (113 kg) of longfin squid, 10,000 lb (4,536 kg) of *Illex* squid, or 600 lb (272 kg) of butterfish retained on board the vessel.

* * * * *

5. In § 648.4, revise paragraph (a)(5) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) *Mackerel, squid, and butterfish vessels*. Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) *Longfin squid moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain longfin squid in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a longfin squid moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that

was issued a confirmation of permit history. Beginning in fishing year 2018, a vessel may be eligible for and could be issued a Tier 1, Tier 2, or Tier 3 longfin squid moratorium permit if the vessel and associated fishing history meet the criteria described under paragraphs (a)(5)(i)(A)(1) through (3) of this section.

(1) Tier 1 longfin squid moratorium permit. Beginning in February 2019, the Regional Administer shall automatically issue a Tier 1 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in confirmation of permit history (CPH) during calendar year 2018 that meets the eligibility criteria in this paragraph (a)(5)(i)(A)(1). To be eligible for a Tier 1 permit, a vessel must have been issued a valid longfin squid/butterfish moratorium permit and landed more than 10,000 lb (4,536 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Fishing history, including for a permit held in confirmation of permit history, can be used by a vessel to qualify for and be issued a Tier 1 longfin squid moratorium permit, provided the Regional Administrator has determined that the fishing and permit history of such vessel has been lawfully retained by the applicant. Landings data used in this qualification must be verified by dealer reports submitted to NMFS. A vessel that was not automatically issued a Tier 1 longfin squid moratorium permit may apply for such a permit in accordance with paragraph (a)(5)(i)(B) of this section.

(2) Tier 2 longfin squid moratorium permit. Beginning in February 2019, the Regional Administer shall automatically issue a Tier 2 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in CPH during fishing year 2018 that does not qualify for a Tier

1 longfin squid moratorium permit, as described in paragraph (a)(5)(i)(A)(I) of this section.

(3) *Tier 3 longfin squid moratorium permit.* To be issued a Tier 3 permit, a vessel must have been issued an open access squid/butterfish permit and landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Landings data used in this qualification must be verified by dealer reports submitted to NMFS.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section. Unless automatically issued a Tier 1 or 2 longfin squid moratorium permit in accordance with paragraphs (a)(5)(i)(A)(I) or (2) of this section, a vessel owner may submit an initial application for a longfin squid moratorium permit described in paragraph (a)(5)(i)(A)(I) through (3) of this section. The initial application must be received by NMFS or postmarked no later than February 29, 2020. An initial application for a longfin squid moratorium permit that is not postmarked before February 29, 2020, will not be processed because of this regulatory restriction, and will be returned to the sender with a letter explaining the reason for its return.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section. Longfin squid landings history generated by separate owners of a single vessel at different times during the qualification period for a longfin squid moratorium permit may be used to qualify more than one vessel, provided that each owner applying for such a permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, to be eligible for a longfin squid moratorium permit, a replacement vessel must meet the criteria specified in paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the upgrade provisions in paragraph (a)(1)(i)(F) of this section apply to a vessel issued a longfin squid moratorium permit.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the vessel baseline specification measures specified in paragraph (a)(3)(i)(H) of this section apply to a vessel issued a longfin squid moratorium permit.

(I) *One-time longfin squid moratorium permit swap.* An entity that owns multiple vessels issued longfin squid/butterfish moratorium permits as of May 26, 2017, has a one-time opportunity to swap one Tier 1 longfin squid moratorium permit issued to one of its vessels with a longfin squid Tier 2 moratorium permit issued to another of its vessels. No other fishery permits issued under this section may be transferred pursuant to this paragraph (a)(5)(i)(I). To be eligible for the one-time longfin squid moratorium permit swap, the following conditions must be met:

(I) An application to swap longfin squid moratorium permits must be received by the Regional Administrator within one year of the Regional Administrator's final

decision on the issuance of the longfin squid Tier 1 or Tier 2 moratorium permits to be exchanged;

(2) At the time of the application, the owner of record for both vessels and permits involved in the permit swap must be identical to the owner of record of the same two vessels issued the associated longfin squid/butterfish moratorium permits as of May 26, 2017;

(3) The length overall of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the length overall associated with that individual permit's vessel baseline specifications by more than 10 percent; and

(4) The horsepower of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the horsepower associated with that individual permit's vessel baseline specifications by more than 20 percent.

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of permit denial—(1) Eligibility.* Any applicant eligible to apply for a longfin squid moratorium permit who is denied such permit by the Regional Administrator may appeal the denial to the Regional Administrator within 30 days of the notice of denial.

(2) *Appeal review.* Review of the Regional Administrator's decisions on longfin squid moratorium permit issuance will be conducted by the NOAA Fisheries National Appeals Office pursuant to the procedures set forth in 15 CFR part 906, unless otherwise

modified by the procedures described here. The National Appeals Office shall make findings and submit its decision to the Regional Administrator and the applicant. The Regional Administrator will review the National Appeals Office decision and make a final decision regarding any appeal in accordance with 15 CFR 906.17. The Regional Administrator's decision is the final decision of the Department of Commerce.

(i) *Appeal request.* An appeal of the denial of an initial permit application must be made in writing and submitted to and received by the Regional Administrator or postmarked no later than 30 days after the denial of an initial longfin squid moratorium permit application. Upon receipt, the Regional Administrator shall forward each appeal request to the National Appeals Office. Appeals must be based on the grounds that the information used by the Regional Administrator in denying the original permit application was incorrect. Items subject to appeal include, but are not limited to, the accuracy of the amount of landings, the correct assignment of landings to a vessel and/or permit holder, and the issuance of a permit to a particular entity. The appeal request must state the specific grounds for the appeal, and include information to support the appeal. An appellant may request a hearing by including a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence alone. An appellant may also request a letter of authorization (LOA), as described in paragraph (a)(5)(i)(M)(3) of this section, to continue to fish during an appeal. If the appeal of the denial of the permit application is not made within 30 days, the denial of the permit application shall constitute the final decision of the Department of Commerce. The appeal will not be reviewed without submission of information in support of the appeal.

(ii) *Reconsideration.* Should the National Appeals Office deny an appeal request submitted according to paragraph (a)(5)(i)(M)(2)(i) of this section, the applicant may request a reconsideration of the appeal by the National Appeals Office. A reconsideration request must be made in writing and submitted to the National Appeals Office within 10 days of that office's decision on the appeal, as instructed by the National Appeals Office.

(3) *Status of vessels pending appeal.* A vessel denied a longfin squid moratorium permit may fish for longfin squid while the decision on the appeal is pending within NMFS, provided that the denial has been appealed, the appeal is pending, and the vessel has on board an LOA from the Regional Administrator authorizing the vessel to fish under the longfin squid moratorium permit category for which the applicant has submitted an appeal. A request for an LOA must be made when submitting an appeal of the denial of the permit application. The Regional Administrator will issue such a letter for the pending period of any appeal. The LOA must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after the receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(ii) *Illex squid and butterflyfish moratorium permits—(A) Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain *Illex* squid or butterflyfish in excess of the incidental catch allowance in paragraph (a)(5)(iv) of this section in the EEZ, a vessel must have been issued an *Illex* squid or butterflyfish moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

Beginning in February 2019, a vessel that was previously issued a longfin squid/butterfish moratorium permit during fishing year 2018 shall be automatically issued a separate butterfish moratorium permit.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(iii) *Limited access Atlantic mackerel permits*. (A) *Vessel size restriction*. A vessel of the United States is eligible for and may be issued an Atlantic mackerel permit to fish for, possess, or land Atlantic mackerel in or from the EEZ, except for any vessel that is greater than or equal to 165 ft (50.3 m) in length overall (LOA), or greater than 750 gross registered tons (680.4 mt), or the vessel's total main propulsion machinery is greater than 3,000 horsepower. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified in § 648.6(a)(2)(i).

(B) *Limited access mackerel permits.* A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (7.46 mt) of mackerel per trip, except vessels that fish exclusively in state waters for mackerel, must have been issued and carry on board one of the limited access mackerel permits described in paragraphs (a)(5)(iii)(B)(1) through (3) of this section, including both vessels engaged in pair trawl operations.

(1) *Tier 1 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(2) *Tier 2 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(3) *Tier 3 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for mackerel permits.* To be eligible to apply for a Tier 1, Tier 2, or Tier 3 limited access mackerel permit to fish for and retain Atlantic mackerel in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a Tier 1, Tier 2, or Tier 3 limited access mackerel permit, as applicable, for the preceding year, be replacing a vessel that was issued a limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(D) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(E) *Qualification restrictions.* See paragraph (a)(1)(i)(C) of this section.

(F) *Change of ownership*. See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(H) *Vessel baseline specification*. (I) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(I) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(2) If a mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the mackerel limited access application. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline

specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(1) of this section.

(I) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

(J) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(K) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(L) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(iv) *Atlantic mackerel incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 20,000 lb (9,072 kg) of Atlantic mackerel as an incidental catch in another directed fishery, provided that the vessel does not exceed the size restrictions specified in paragraph (a)(5)(iii)(A) of this section. The incidental

catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(v) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for, possess, or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(vi) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 250 lb (113 kg) of longfin squid, 600 lb (272 kg) of butterfish, or up to 10,000 lb (4,536 kg) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

* * * * *

6. In § 648.7, revise paragraphs (a)(1), (b)(3)(iii), and (f)(2)(i) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The dealer reporting requirements specified in this paragraph (a)(1) for dealers purchasing or receiving for a commercial purpose Atlantic chub mackerel are effective through December 31, 2020. The following

information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Greater Atlantic Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Greater Atlantic Region under this part, and American lobster, managed under part 697

of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

* * * * *

(b) * * *

(3) * * *

(iii) *Longfin squid moratorium permit owners or operators.* The owner or operator of a vessel issued a longfin squid moratorium permit must report catch (retained and discarded) of longfin squid daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year longfin squid was caught; total pounds longfin squid retained and total pounds of all fish retained. Daily longfin squid VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if longfin squid caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate.

* * * * *

7. In § 648.10:

- a. Revise paragraphs (b)(9) through (11);
- b. Add paragraph (b)(12); and
- c. Revise paragraphs (e)(5)(i), (o), and (p).

The revisions and addition read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(9) A vessel issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit;

(10) A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit;

(11) A vessel issued an *Illex* squid moratorium permit; or

(12) A vessel issued a butterfish moratorium permit.

* * * * *

(e) * * *

(5) * * *

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, monkfish, or any other fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

* * * * *

(o) *Longfin squid VMS notification requirement.* A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit intending to harvest, possess, or land more than 2,500 lb (1.13 mt) of longfin squid on that trip must notify NMFS by declaring a longfin squid trip before leaving port at the start of each trip.

(p) *Illex squid VMS notification requirement.* A vessel issued an *Illex* squid moratorium permit intending to harvest, possess, or land 10,000 lb (4,536 kg) or more of

Illex squid on that trip must notify NMFS by declaring an *Illex* squid trip before leaving port at the start of each trip.

8. In § 648.11, revise the introductory text in paragraph (n)(2) and paragraphs (n)(3)(i) and (ii) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(n) * * *

(2) *Sampling requirements for limited access Atlantic mackerel or Tier 1 or 2 longfin squid, or butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or a longfin squid or butterfish moratorium permit on which a NMFS-approved observer is embarked must provide observers:

* * * * *

(3) * * *

(i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid or butterfish moratorium permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable

measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If a vessel issued any limited access Atlantic mackerel permit slips catch, the vessel operator must report the slippage event on the Atlantic mackerel and longfin squid daily VMS catch report and indicate the reason for slipping catch. Additionally, for a vessel issued a limited Atlantic mackerel permit or a longfin squid or butterfish moratorium permit, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

* * * * *

9. In § 648.13, revise paragraph (a) to read as follows:

§ 648.13 Transfers at sea.

(a) Vessels issued a longfin squid, butterfish, or *Illex* squid moratorium permit and vessels issued a squid/butterfish incidental catch permit may transfer or attempt to transfer or receive longfin squid, *Illex* squid, or butterfish only if authorized in writing by the Regional Administrator through the issuance of a letter of authorization (LOA).

* * * * *

10. In § 648.14:

a. Revise paragraphs (g)(1)(i), (g)(1)(ii)(B), (g)(2)(i), (g)(2)(ii)(A), (D) and (F);

b. Add paragraph (g)(2)(ii)(H); and

c. Revise paragraphs (g)(2)(iii)(A), the heading of paragraph (g)(2)(v), and paragraphs (g)(2)(v)(A) and (g)(2)(vi).

The revisions and addition read as follows:

§ 648.14 Prohibitions.

(g) * * *

(1) * * *

(i) *Possession and landing.* Take and retain, possess, or land more Atlantic mackerel, squid or butterfish than specified under, or after the effective date of, a notification issued under §§ 648.22 or 648.24(d).

(ii) * * *

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

* * * * *

(2) * * *

(i) *General requirement.* Fail to comply with any measures implemented pursuant to subpart B of this part.

(ii) * * *

(A) Possess more than the incidental catch allowance of longfin squid, unless issued a longfin squid moratorium permit.

* * * * *

(D) Take and retain, possess, or land mackerel, squid, or butterfish in excess of a possession limit specified in § 648.26.

* * * * *

(F) Take and retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

* * * * *

(H) Possess more than the incidental catch allowance of butterfish, unless issued a butterfish moratorium permit.

(iii) * * *

(A) Fish with or possess nets or netting that do not meet the gear requirements for Atlantic mackerel, longfin squid, *Illex* squid, or butterfish specified in § 648.23(a); or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed and not available for immediate use as defined in § 648.2 or the vessel is fishing under an exemption specified in § 648.23(a)(5).

* * * * *

(v) *VMS reporting requirements in the directed Atlantic mackerel longfin squid, and Illex squid fisheries.* (A) Fail to declare via VMS into the directed mackerel, longfin squid,, or *Illex* squid fisheries by entering the fishery code prior to leaving port at the start of each trip if the vessel will harvest, possess, or land more than an incidental catch of Atlantic mackerel, longfin squid, or *Illex* squid and is issued a Limited Access Atlantic mackerel permit, Tier 1 or Tier 2 longfin squid moratorium permit, or *Illex* squid moratorium permit.

* * * * *

(vi) Slip catch, as defined at § 648.2, unless for one of the reasons specified at § 648.11(n)(3)(i) if issued a limited access Atlantic mackerel permit, or a longfin squid or a butterfish moratorium permit.

* * * * *

11. In § 648.22, revise paragraphs (a), (b)(1)(i)(B), (c)(3), and (c)(6) to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) *Illex squid* – Initial OY (IOY), including Research Set-Aside (RSA), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) *Butterfish* – ACL; ACT including RSA, DAH, DAP; bycatch level of the total allowable level of foreign fishing (TALFF), if any; and butterfish mortality cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) *Atlantic mackerel* – ACL; commercial ACT, including RSA, DAH, mackerel Tier 3 allocation (up to 7 percent of the DAH), DAP; joint venture processing (JVP) if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to

purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) *Longfin squid* –

(i) IOY, including RSA, DAH, and DAP for longfin squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(ii) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) * * *

(1) * * *

(i) * * *

(B) *Illex* squid—Catch associated with a fishing mortality rate of F_{MSY} .

* * * * *

(c) * * *

(3) The amount of longfin squid, *Illex* squid, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(vi), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(a)(5)(iii) and the incidental mackerel permit at § 648.4(a)(5)(iv).

* * * * *

(6) Commercial seasonal quotas/closures for longfin squid and *Illex* squid, and allocation for the Tier 3 Limited Access Mackerel permit.

* * * * *

12. In § 648.24, revise paragraph (c)(1) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(c) * * *

(1) *Directed butterfly fishery closure.* When the butterfly catch reaches the butterfly closure threshold as determined in the annual specifications, NMFS shall implement a 5,000 lb (2,268 kg) possession limit for vessels issued a butterfly moratorium permit that are fishing with a minimum mesh size of 3 inches (76 mm). When NMFS projects that the butterfly catch has reached the butterfly DAH, as determined in the annual specifications, NMFS shall implement a 600 lb (272 kg) possession limit for all vessels issued a longfin squid or butterfly moratorium permit, or a squid/butterfly incidental catch permit.

* * * * *

13. In § 648.25, revise paragraph (a)(4)(i) to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfly framework adjustments to management measures.

(a) * * *

(4) * * *

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(3) of this section, the measures will be issued as a final rule in the **Federal Register**.

* * * * *

14. In § 648.26, revise paragraphs (b) through (d) to read as follows:

§ 648.26 Mackerel, squid, and butterflyfish possession restrictions.

* * * * *

(b) *Longfin squid*—(1) *Directed fishery*. A vessel must be issued a valid longfin squid moratorium permit to fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip. Unless the directed fishery is closed pursuant to paragraph § 648.24(a)(1), the following longfin squid possession limits apply:

(i) *Tier 1 moratorium permits*. A vessel issued a Tier 1 longfin squid moratorium permit may possess an unlimited amount of longfin squid per trip.

(ii) *Tier 2 moratorium permits*. A vessel issued a Tier 2 longfin squid moratorium permit may not fish for, possess, or land more than 5,000 lb (2,268 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(iii) *Tier 3 moratorium permits*. A vessel issued a Tier 3 longfin squid moratorium permit may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(2) *Incidental fishery*. (i) A vessel issued an open access squid/butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip, and may only land longfin squid once on any calendar day.

(ii) During a closure of the directed longfin squid fishery in either Trimester I or III pursuant to paragraph § 648.24(a)(1), a vessel may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iii) Unless otherwise specified in paragraph (b)(2)(iv) of this section, during a closure of the directed longfin squid fishery in Trimester II pursuant to § 648.24(a)(1), a vessel may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iv) During a closure of the directed longfin squid fishery in Trimester II, a vessel issued either a Tier 1 or Tier 2 longfin squid moratorium permit may possess more than 250 lb (113 kg) of longfin squid per trip, provided the following conditions are met:

(A) The vessel operator has declared into the directed *Illex* squid fishery via VMS, as specified in § 648.10;

(B) The vessel is seaward of the coordinates specified at § 648.23(a)(5);

(C) The vessel possesses more than 10,000 lb (4,536 kg) of *Illex* squid on board;

(D) The vessel possesses less than 15,000 lb (6,803 kg) of longfin squid if issued a Tier 1 longfin squid moratorium permit or 5,000 lb (2,268 kg) of longfin squid if issued a Tier 2 longfin squid moratorium permit; and

(E) All fishing gear is stowed and rendered not available for immediate use, as defined in § 648.2, once the vessel is landward of the coordinates specified at § 648.23(a)(5).

(c) *Illex squid*—(1) *Directed fishery*. A vessel must be issued a valid *Illex* squid moratorium permit to fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid from or in the EEZ per trip. Unless the directed fishery is closed pursuant to § 648.24(a)(2), a vessel issued an *Illex* moratorium permit may possess an unlimited amount of *Illex* squid per trip.

(2) *Incidental fishery.* A vessel may not fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid per trip at any time, and may only land *Illex* squid once on any calendar day if:

- (i) A vessel is issued an open access squid/butterfish incidental catch permit; or
- (ii) A vessel is issued an *Illex* moratorium permit and the directed fishery is closed pursuant to § 648.24(a)(2).

(d) *Butterfish.* Any vessel issued a butterfish permit under this part may only land butterfish once on any calendar day.

(1) *Directed fishery.* A vessel must be issued a butterfish moratorium permit to fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip.

(i) *Vessels fishing with larger mesh.* A vessel issued a butterfish moratorium permit fishing with a minimum mesh size of 3 inches (76 mm) is authorized to fish for, possess, or land butterfish with no possession restriction in the EEZ per trip, provided that directed butterfish fishery has not been closed and the reduced possession limit has not been implemented, as specified in § 648.24(c)(1). When butterfish harvest is projected to reach the threshold for the butterfish fishery, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfish per trip at any time. When butterfish harvest is projected to reach the DAH limit, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any time.

(ii) *Vessels fishing with smaller mesh.* A vessel issued a butterfish moratorium permit fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfish per trip at any time, provided that butterfish

harvest has not reached the DAH limit and the reduced possession limit has not been implemented, as described in § 648.24(c)(1). When butterfish harvest is projected to reach the DAH limit, as described in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any time.

(2) *Incidental fishery.* A vessel issued a squid/butterfish incidental catch permit, regardless of mesh size used, may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any.

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